

REMARKS

Claim 1 was pending in the application and was rejected. Claim 1 was amended to limit its perspective to the server, and to remove alternative paths. Claims 42-45 were added. No new matter has been introduced. Claims 42-45 are alternate paths previously listed in claim 1, with the exception of claim 44, support for which can be found in paragraph [0010] of Applicant's specification as published in United States Patent Publication No. 2006/0168657. The title has been changed. The specification has been rewritten to incorporate section headings and is attached hereto. An Information Disclosure Statement is being concurrently filed as per the Examiner's suggestion. Applicant respectfully requests reconsideration.

SPECIFICATION

The Office Action objected to the title as not being descriptive. Accordingly, the title has been amended.

The Office Action further objected to the specification. The specification has been redone to include section headings and correct issues of trade dress. A corrected specification is attached hereto.

INFORMATION DISCLOSURE STATEMENT

The Office Action objected to the known art references listed in the specification but not in an Information Disclosure Statement. Accordingly, Applicant is concurrently filing an Information Disclosure Statement conforming to 37 CFR 1.98(b).

CLAIM OBJECTIONS

The Office Action objected to claim 1 because of informalities. Claim 1 has been amended.

DOUBLE PATENTING

The Office Action provisionally rejected claim 1 on the ground of nonstatutory obviousness-type double patenting over claims 1-18, 22-25, 27-30, and 34-39 of co-pending application no. 12/125,247.

Accordingly, Applicant is concurrently filing a Terminal Disclaimer to address the provisional double patenting rejection.

CLAIM REJECTIONS UNDER 35 USC §103

The Office Action rejected claim 1 under 35 USC 103(a), as being unpatentable over Buchmitch et al. (US Patent Publication No. 2002/0159601) in view of Morlang et al. (US Patent Publication No. 2003/0182576).

Claim 1 is not unpatentable over Buchmitch and Morlang because neither reference teaches or suggests the claim element of a predetermined threshold for the access codes prompting a refresh of the access code list, as required by claim 1 and elaborated upon in new claims 42-44. The Office Action points to paragraph [0053] of Buchmitch as applying a threshold test, but this is not the case. Here is the referenced paragraph in its entirety:

"[0053] The gateway keeps the counter (i) indexing the number of successful user authentications. If N=100, the counter goes from 100 down to 1. When the counter reaches 0, no more authentications are allowed for a given user ID without re-initializing the key card."

There is no indication that a predetermined threshold is applied to this counter. In fact, this is a teaching away in that the user authentications are allowed to run out completely. The claim at issue prevents this by prompting a refresh of the access codes before the codes run out. Further, in Buchmitch, a counter must be kept at the gateway. In the claims at issue, there is no use for a counter. All that is required is a simple comparison between the number of unused access codes and the predetermined threshold amount. There is no such teaching in Buchmitch.

"A prior patent must be considered in its entirety, i.e., as a whole, including portions that would lead away from the invention in suit." *W. L. Gore & Assoc., Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1550, 220 USPQ 303, 311 (Fed. Cir. 1983), cert. denied 469 U.S. 851 (1984).

For the foregoing reasons, Applicant respectfully requests allowance of the pending claims. The Director is hereby authorized to charge any fees which may be required, including any petition for extension of time fees under §1.17, or credit any overpayment, to Deposit

Serial Number 10/532,195
Docket Number CH920020034US1
Amendment Page 9 of 9

Account Number 50-0510.

Respectfully submitted,

/Michael J. Buchenhorner/

Michael J. Buchenhorner
Reg. No. 33,162

Date: April 2, 2009

Michael Buchenhorner, P.A.
8540 S.W. 83 Street
Miami, Florida 33143
(305) 273-8007 (voice)
(305) 595-9579 (fax)